

Appl. No. 10/657,019
Amdt. dated June 20, 2006
Response to Office Action dated March 20, 2006

Amendments to the Drawings:

The attached two replacement sheets of drawings include changes to Figures 1-4. These replacement sheets replace the label “Figure” with the abbreviation “Fig.,” as required by the Office.

Attachment: Replacement Sheets

Remarks/Arguments

Claims 1-26, as amended, are pending for the Examiner's review and consideration. In a non-final Office Action dated March 20, 2006, the Office rejected claims 1-26.

The specification has been amended to correct typographical errors. Claim 4 has also been amended to correct a typographical error.

The Office has objected to the drawings because the abbreviation "Fig." should be used instead of "Figure." Applicants herewith submit replacement drawing sheets that overcome the Office's objection.

The Office rejects claims 5-10 and 16-26 under 35 U.S.C. § 112, second paragraph as allegedly indefinite, based upon the use of the term "pycnogenol." Applicants respectfully traverse.

The term "pycnogenol" is understood by those of ordinary skill in the art as a generic term that "refers to a specific mixture of procyanolins extracted from the bark of the French maritime pine, *Pinus maritima*." See PDR FOR NUTRITIONAL SUPPLEMENTS 386 (1st ed. 2001). Because one of ordinary skill in the art is familiar with the definition of the term "pycnogenol," he can readily discern the metes and bounds of the claims, as required for definiteness under 35 U.S.C. § 112, second paragraph. Thus, the Office's rejection of claims 5-10 and 16-26 under 35 U.S.C. § 112, second paragraph as indefinite cannot stand and should be withdrawn.

The Office rejects claims 1-26 under 35 U.S.C. § 103(a) as obvious over DE 202 07 569 U1 ("DE '569") in view of U.S. patent No. 6,579,544 to Rosenberg, et al. ("'544 patent") and U.S. patent No. 6,528,042 to Brown, et al. ("'042 patent"). Applicants respectfully traverse.

Claims 1-26 recite nutritional compositions suitable for facilitating bone healing in a mammal, comprising lysine, proline, ascorbic acid, copper, and vitamin B₆, as well as methods of treatment therewith.

The Office asserts that DE '569 renders the claims obvious because it discloses a dietary supplement containing lysine, proline, Vitamin C, copper, Vitamins B₆, A, D₃, B₁, B₂,

niacin, folic acid, B₁₂, biotin, pantothenic acid, calcium, phosphorous, magnesium, zinc, selenium, manganese, chromium, molybdenum, potassium, hesperidin, arginine, cysteine, myo-insitol, carnitine, ubiquinone, and bioflavonoids. *See* Office Action, p. 4.

While DE '569 discloses all of these ingredients individually, it does not disclose them in the specific combination cited above. DE '569 discloses several categories of ingredients that may be used in the dietary supplement, including amino acids (pp. 6-7); vitamins (pp. 9-10); metals (pp. 11-12); other active ingredients (pp. 12-13); and additives (pp. 15-16). Each category contains a host of compounds. The Office has not pointed to any suggestion or motivation in DE '259 that would cause one of skill in the art to select the specific claimed combination of ingredients.

Nor do the secondary references provide the requisite motivation to select the claimed combination of ingredients. The '544 patent discloses that vitamin C is essential to healing bone fractures, among other things. *See* '544 patent, col. 9, ll. 32-54. The '544 patent also discloses that bioflavonoids promote vitamin C activity. *See id.* at col. 17, ll. 51-58. Thus, the '544 patent would at most motivate one of skill in the art to combine vitamin C and a bioflavonoid for the treatment of bone fractures. It would not, either alone or in combination with DE '259, motivate one of skill in the art to select the claimed combination of ingredients.

The '042 patent discloses compositions for amelioration of disruption of energy metabolism secondary to stress comprising a combination of flavonoids and synergists, including amino acids, carbohydrates, carnitines, flavonoids, nucleosides and tocopherols. *See* '042 patent, col. 1, ll. 20-26. The '042 patent discloses a multitude of suitable synergists in each of the above categories. *See id.* at col. 8, l. 45 to col. 11, l. 51. The '042 patent does not teach or suggest the claimed combination of ingredients, either alone or in combination with DE '259. Further, the Office has not pointed to any motivation to combine the '042 patent with DE '259 to obtain a composition for facilitating bone healing. The '042 patent is directed to compositions for amelioration of energy metabolism, and does not teach or suggest bone healing. Thus, one of skill in the art would not be motivated to combine the '042 patent with DE '259 to develop a composition for facilitating bone healing, as claimed by Applicants.

Based on the foregoing, the Office's rejection of claims 1-26 under 35 U.S.C. § 103(a) as obvious over DE '569 in view of the '544 patent and the '042 patent cannot stand and should be withdrawn.

Conclusion

In view of the foregoing amendments and arguments, it is believed that the application is in condition for allowance, early notice of which would be appreciated. Should any outstanding issues remain, the Examiner is invited to telephone the undersigned at the telephone number indicated below to discuss them. No fee is believed to be due for the submission of this response. Should any fees be required, please charge such fees to Kenyon & Kenyon LLP deposit account number 11-0600.

Respectfully submitted,

KENYON & KENYON LLP

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By:


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